

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**EXXONMOBIL OIL CORPORATION,**  
A New York Corporation,

Plaintiff,

V.

**Case No. 08 CV 3064**

**D CONSTRUCTION MANAGEMENT CO., INC.**, an Illinois Corporation; **PT FERRO CONSTRUCTION COMPANY, INC.**, an Illinois Corporation; **TRANSYSTEMS CORPORATION**, a Missouri Corporation; **CONSOER TOWNSEND ENVIRODYNE ENGINEERS, INC.** a Delaware Corporation,

Defendants.

Judge Norgle  
Magistrate Judge Schenkier

**PLAINTIFF'S ANSWER TO DEFENDANT D CONSTRUCTION INC'S**  
**AFFIRMATIVE DEFENSES**

NOW COMES Plaintiff EXXONMOBIL OIL CORPORATION (“Plaintiff”) by and through its attorneys, Brumund, Jacobs, Hammel, Davidson & Andreano LLC, and for its Answer to Defendant D Construction Inc’s (sued herein as D Construction Management Company, Inc.) Affirmative Defenses to Plaintiff’s Complaint states as follows:

**ANSWER TO: FIRST AFFIRMATIVE DEFENSE**  
**(Contributory Negligence)**

1. That before and at the time of the occurrence alleged in the Plaintiff's Complaint, Plaintiff was under a duty to use ordinary care for its property.

**ANSWER:** Plaintiff admits the duty alleged, but denies any breach thereof.

2. That if Plaintiff sustained damages as alleged in Plaintiff's Complaint, then

said damages were sustained as a direct and proximate result of Plaintiff's breach of this duty, when it committed one of more of the following negligent acts and/or omissions:

- a. Negligently and carelessly failed to provide notice of underground electrical lines in accordance with applicable statutes and ordinances;
- b. Negligently and carelessly failed to notify the parties of the location and existence of the underground electrical lines, though Plaintiff has reason to know that excavation and construction activities were ongoing in the area, and could potentially involve and/or affect the underground electrical wires.

**ANSWER:** The Plaintiff denies the entirety of allegation No. 2 (a) & (b), and demands strict proof thereof.

**WHEREFORE**, the Plaintiff prays this reject and hold for naught the afore-plead affirmative defense, and for all such other and further relief this Court deems proper, just and fit.

**ANSWER TO: SECOND AFFIRMATIVE DEFENSE**  
**(Failure to Mitigate Damages)**

1. That before, on, and after the date of the incident complained of in Plaintiff's Complaint, Plaintiff has a duty to mitigate damages.

**ANSWER:** Plaintiff admits the duty alleged, but denies any breach thereof.

2. Plaintiff breached its duty to mitigate its damages in one or more of the following respects:

- a. Failing to notify the party and/or parties performing construction activities on and around Plaintiff's property of the existence and location of the underground electrical lines after it was apparent that construction activities that may involve or affect those lines were underway.
- b. Failed to inform the party and/or parties performing construction activities on and around Plaintiff's property that electrical line casings and

moorings had been impacted, after it was apparent to Plaintiff that electrical lines had been impacted;

c. Failing to provide the water filtration plant operated by Plaintiff with redundant and/or backup sources of electricity to the plant, to avoid power outages.

**ANSWER:** The Plaintiff denies the entirety of allegation Nos. 2 (a), (b) & (C) and demands strict proof thereof.

**WHEREFORE**, the Plaintiff prays this reject and hold for naught the afore-plead affirmative defense, and for all such other and further relief this Court deems proper, just and fit.

**ExxonMobil Oil Corporation**

By: /s/ Frank P. Andreano  
One of Its Attorneys

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